United States
Environmental Protection Agency
New England

Storm Water Permit Basics:
New Hampshire Digging Needs a Federal Permit

Since March 10, 2003, construction activity that disturbs **1** or more acres of land needs to apply for and comply with the federal storm water discharge permit. (Projects disturbing 5 or more acres have needed permit coverage since 1992.) This is a requirement of the federal NPDES (National Pollutant Discharge Elimination System) program authorized by the Clean Water Act. For projects in NH, you apply to the U.S. Environmental Protection Agency.

This permit is different from:

- NH's own Alteration of Terrain (Site Specific) permit
- State and Federal wetlands permits
- Local building and erosion and sediment control permits

What EPA considers **"construction activity"**: clearing, grading, excavation, stockpiling of fill material and other activities that expose soil related to projects that build, expand or replace something — a home, a store, a golf course, a road, etc — or that demolish something. "Construction" does not include routine earth-disturbing activity that is part of the day-to-day operation of a completed facility, like landscape maintenance or grading gravel roads.

If your own work site creates less than 1 acre of disturbance but is part of a **"larger plan of development or sale"** totaling 1 or more acres of disturbance, you need permit coverage. It is important to note that the threshold is for total disturbance. The areas of disturbance do not need to be directly adjacent, or open at the same time, to be included in the calculation of total disturbance.

If there is no way that storm water (rain, snow melt, etc.) from your site could run off your site in a concentrated manner (digging its own little channel, running down a street, flowing in a ditch, going down a storm drain, etc.) and eventually make its way to surface water (wetland, pond, stream, brook, lake, ocean, etc.) or into a municipal separate storm sewer system, then you don't need this permit. But that would be very unusual — you would have to capture all storm water and allow it to evaporate or soak into the ground or use it for irrigating the site.

Here's who needs to apply, and what to do

Both the contractor (with day-to-day control of the site) **and** the owner or developer (with control of the plans and specs) need to apply. They need to submit **"Notice of Intent" (NOI)** forms to be covered by the NPDES General Permit for Storm Water Discharges from Construction Activity and develop a **Storm Water Pollution Prevention Plan (SWPPP)** which should describe how they will prevent erosion, control sediment loss, and keep other pollutants from running off the site. The SWPPP should be prepared before the NOI is submitted.

You need to insure that EPA receives your complete NOI at least 7 days before you plan to start land-disturbing work.

- After you submit your NOI (electronically or by regular mail) to EPA, EPA will post your NOI at **http://cfpub1.epa.gov/npdes/stormwater/noi/noisearch.cfm**
- You are authorized under the permit once your NOI is shown in "Active" status. NOIs listed as "Active" have passed the 7-day "Waiting" period and are not "On Hold" due to eligibility concerns (like impact on impaired surface waters or endangered species).
- EPA will attempt to contact you regarding any problems or delays, but you must ensure you are authorized before starting work by checking the web site or calling EPA's NOI Processing Center at 866.352.7755.

- Keep the SWPPP on site (do not send to EPA) and be prepared to show it to inspectors who may visit your site. Inspectors will look to see that you are implementing your plan, and have inspected your site regularly, so be ready.
- Within 30 days after the project is done and completely stabilized (or transferred to another permit holder or the homeowner after temporary stabilization), you must file a **Notice of Termination**.

To get the EPA permit, forms and guidance, go to http://cfpub1.epa.gov/npdes/stormwater/cgp.cfm or call one of the EPA contacts on page 4.

If you need a NH Alteration of Terrain (Site Specific) permit too

NH's permit and EPA's permit differ in coverage based on the size and location of the project. But there is considerable overlap between the plans you need to develop for the two permits, and you can develop one good plan to satisfy both. ***If you prepare a plan that adheres to all the components of NH DES's "Guidelines for the Preparation of Site Specific Applications" (1996), the following is the additional information you must provide to satisfy the terms of EPA's SWPPP.***

- The site map needs to also show: areas of soil disturbance, areas where soil will not be disturbed, areas that have been disturbed but are now completely stabilized, and locations of off-site material, waste, borrow/fill and equipment storage areas.
- Describe and show the location of any industrial operations dedicated to the project (such as a concrete or asphalt plants) and how storm water pollution from those operations will be minimized.
- Name the receiving waters and show the extent of wetlands at or near the site.
- The narrative should describe how the phasing and sequencing of construction activities relates to the control measures and stabilization practices associated with each.
- Describe the roles and responsibilities of the different operators involved, including which areas of the site and which control measures each site operator has control over.
- Your description of controls should include how run-on will be diverted away from exposed soils and the types of on-site infiltration methods to be used during construction and post-construction (see EPA's Permit Part 9.A.2.d.)
- For sites disturbing over 10 acres at one time and draining to the same location, provide a sediment basin designed to handle runoff from a 2-year, 24-hour storm (or 3600 ft^3/acre) at least until the site has been permanently stabilized. (Where a basin is infeasible or unsafe, justify alternative controls.)
- For sites disturbing less than 10 acres at once, provide smaller sediment basins/traps and sediment controls (silt fence, etc.) for all down slope boundaries and any appropriate mid/side slope boundaries.
- Show that you plan to remove sediment from sediment traps and ponds when their design capacity has been reduced by 50%.
- Explain how off-site tracking of sediments and dust by vehicles will be minimized.

- Explain how sources of non-storm water generated, such as vehicle wash water, building and pavement wash water, and water line flushings will be prevented from contributing to runoff pollution. Note that discharge of water contaminated with detergents or other chemicals is not allowed under the storm water permit.

- Excavation dewatering discharges are only authorized if they are shown to be uncontaminated (see EPA Permit Part 9.A.2.b.) AND they must be treated to ensure (weekly sampling required) that they meet the numeric limits for total suspended solids (see EPA Permit Part 9.A.2.c.).

- Describe the construction materials and wastes associated with the project (debris, fertilizer, chemicals, etc), how their exposure to storm water will be minimized, and how spills will be prevented, contained, and cleaned up. Refueling, servicing, and failing to maintain vehicles are common sources of petroleum spills.

- Describe how storm water pollution from off-site material storage areas used for the project, such as soil stockpiles and borrow areas, will be minimized.

- Discuss how you determined whether federally-listed endangered species or critical habitat are in your project area, whether they could be harmed by your project, and the measures you will take to protect them. (See Section 3.7 of the EPA Permit for how to do this.)

- Discuss how you determined that you will be in compliance with NH state laws protecting historical resources.

- Explain how you determined whether a Total Maximum Daily Load (TMDL) waste load allocation for sediment or other construction-related pollutants has been established for the surface water that may receive runoff from your site (either directly, or through a storm drain system). If so, describe the controls you will use to stay within this "pollution budget." (See Section 3.14 of the Permit for how to do this.)

- Include a copy of the permit, your NOI form, and EPA's notification of receipt (when available).

- Maintain construction activity records showing:
  - dates when major grading activities occur;
  - dates when construction activities temporarily or permanently cease on part of the site; and,
  - dates when stabilization is begun (no later than 14 days after construction activity ceases, if earth disturbing activities won't resume within that period).

- Keep inspection records showing:
  - that inspections have been conducted at least once every 7 days OR once every 14 days and within 24 hours of a 0.5 inch storm (frequency can be reduced during the winter — see Section 3.10 of the Permit);
  - that all disturbed areas, material storage areas, structural controls, vehicle entry/exit locations, and storm water discharge locations have been inspected;
  - the names and qualifications of personnel conducting the inspections, dates, weather, scope, findings and any corrective action taken; and,
  - that the SWPPP has been modified within 7 days of any inspection that shows a need to institute or change any storm water controls.

NOTE: This is an overview to give you an idea of how to combine the two required plans into one. It is not a substitute for reading and understanding both permits.

The EPA permit also strongly encourages various prudent practices, such as preserving existing vegetation where possible, stabilizing disturbed areas immediately, and avoiding impervious surfaces.

If your project does not require a NH permit but does require an EPA permit, simply follow the SWPPP preparation guidelines outlined in the EPA permit.

Contacts

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